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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,660	11/09/2001	Scott Harold Wilson	005127.00130	5805
22907	7590	02/02/2004	EXAMINER	
BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			MISKA, VIT W	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/986,660

**Applicant(s)**

WILSON, SCOTT HAROLD

**Examiner**

Vit W. Miska

**Art Unit**

2841

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5, 8-11, 14-15, 19, 21-23, 28-31, 33, 35 and 37-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Houlihan ('915).

The reference discloses a timepiece with case 20b, timing element 42 for displaying time, bracelet style wristband including first extension 20a, second extension 20b, first and second separating elements 22 being a textured surface with indentations, formed adjacent the ends of the first and second extensions, and third separating element 22 formed between case 20b and the wrist.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 7, 12, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houlihan ('915). With respect to claim 6 and 34, material for the separating element is not mentioned in the reference; however, the patentee indicates that elements 22 is a soft padding (col. 2, line 56) for cushioning purposes, and thus one skilled in the art would consider any suitable material for these elements. Silicone would be one of such materials with which one skilled in the art would be familiar to provide padding for the wristband. With respect to claims 7 and 12, making separating elements 22 separate or integral with the band or case would be obvious to one skilled in the art in view of *In re Troutman* (126 USPQ 56) holding that whether two elements are integral or separate is of no patentable significance. Regarding claim 32, use of polymeric or plastic materials in watch cases and wristbands is well known and one skilled in the art would consider the same in the reference for these elements to facilitate manufacture and durability.

3. Claims 13, 16-18, 20, 24-27, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada et al in view of Cozart. Wada et al discloses a wristband mounted mobile phone including a bracelet style wristband including first and second extensions, with first and second separating elements adjacent the lower ends

of the wristband as seen in Fig. 3 protruding from the ends of the band . A timekeeping function is not described in the design patent, however Official Notice is taken of the provision of the display of time of day in mobile phones as being well known in conjunction with the display of received calls. A third separating element is not shown. Cozart discloses a timepiece with separating element 15-17 integral with timepiece case back 11 for providing a space between the watch case and wrist. One skilled in the art having both references would be taught that such separating element integral with the watch case could be provided in Wada et al as a means for ventilating the area between the watch and wrist, as disclosed by Cozart. This structure would provide the three point contact area with the wrist and preventing substantial contact between the wristband, case and wrist.

4. With respect to claims 16, 18 and 24, it is not clear if the separating elements in Wada et al are integral or separate with the band; however, for reasons similar to those set forth for the rejection of claim 12, above, it would be obvious for one skilled in the art to make these elements integral or separate with the case or band. Silicone recited in claim 17 would be an obvious material for the separating areas, as noted above with respect to claim 6.

5.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 703-308-3096. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 703-308-3121. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

VM  
1/22/2004

A handwritten signature in black ink, appearing to read 'Vit Miska', with a stylized, cursive script.

**Vit Miska**  
**Primary Examiner**